

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANTHONY DeFRANCO,)	
)	
Plaintiff,)	
)	Civil Action No. 04-230-ERIE
V.)	
)	Judge Maurice B. Cohill, Jr.
SUPERINTENDENT WILLIAM WOLF;)	Mag. Judge Susan P. Baxter
STEVE REILLY; DENESE BRUNNER;)	
MANAGER ROD SHOWERS; CASE)	
MANAGER JUDY JACKSON;)	
DR. JOHN DOE; JANE DOE;)	
JEFFREY BEARD; ASSIST. SUPER.)	
WILLIAM BARR; MARILYN)	
BROOKS,)	
Defendants.)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL

AND NOW, come the defendants, Superintendent William Wolfe, Steve Reilly, Denise Bunner (incorrectly identified as Denese Brunner), Unit Manager Rod Showers, Case Mgr.—GECAC Judy Jackson, Jeffrey Beard, Assistant to the Superintendent William Barr, and Marilyn Brooks (incorrectly identified as “Mariland”), by their attorneys, Thomas W. Corbett, Jr., Attorney General, Mary Lynch Friedline, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and submit the following Response to Plaintiff’s Motion to Compel Production of Documents (Doc. #199):

1. DeFranco’s Third Request for Production, the subject of his latest Motion to Compel, seeks the second shift duty roster for March 7, 2005. In his Motion, plaintiff states that this request is pertinent to his retaliatory transfer claim against defendant Barr.

2. Defendants objected on the grounds that the roster information was confidential, irrelevant to plaintiff’s claim, and in any event, disclosure could pose a security risk to staff, inmates and/or the institution. (Exh. A.)

3. Ironically, Plaintiff has already moved for partial summary judgment on his retaliatory transfer claim, and thus, should not need additional discovery. In any event, as set forth in defendants' response to plaintiff's partial motion for summary judgment and cross motion, that claim requires plaintiff to prove that William Barr intended to punish him when he sought the transfer in February. The identity of corrections officers working that day has nothing to do with this claim.

4. Above all, plaintiff already knows the identity of officers involved in the transfer, as demonstrated in his follow-up interrogatories to Superintendent Brooks where he stated that 15 guards were used to inform him of his transfer, including Gilbert and Coleman. (Exh. B, ¶1.) Brooks confirmed that Officers Coleman and Gilbert (not 15 guards) informed plaintiff of the transfer and if others were present in the intake area it was because they had other duties, not because they were involved in the transfer. (Exh. B.)

5. Plaintiff's insistence upon seeing a duty roster serves no purpose except to provide the identities of additional staff whom he can attempt to confront and badger. He has engaged in such tactics in the past and misused information turned over in discovery, making defendants' objections on security grounds all the more compelling.

6. Finally, plaintiff's reference to the discovery responses in an unrelated case, Kerwin v. McConnel, 05-93, is meaningless. In that case, DOC defendants were asked to produce specific work schedules for two of the named defendants, to establish their presence at the facility on the date in question. That was a relevant request given the claims in the case and defendants complied. No such rationale supports plaintiff's request here.

WHEREFORE, defendants submit that plaintiff's Motion to Compel (Doc. #199) is without merit and should be denied.

Respectfully submitted:

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Attorney General

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Date: August 9, 2006

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2006, I electronically filed the foregoing *Response to Motion to Compel (#199)* with the Clerk of Court using the CM/ECF system. This document will be mailed via U.S. mail to the following non CM/ECF participants:

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